

SENATE BILL 169

D3, N1

1lr1327

By: **Senator Ramirez**

Introduced and read first time: January 24, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Bankruptcy – Homestead Exemption – Debtor’s Residence**

3 FOR the purpose of altering the categories of dwelling units that qualify for the
4 homestead exemption that an individual may claim in a certain bankruptcy
5 proceeding; providing that the exemption is limited to a certain amount of an
6 individual debtor’s aggregate interest in owner-occupied real or personal
7 property, an owner-occupied condominium unit, or a cooperative that owns
8 property that the debtor occupies as a residence; providing for the application of
9 this Act; and generally relating to debtor exemptions in bankruptcy
10 proceedings.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 11–504
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2010 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Courts and Judicial Proceedings**

19 11–504.

20 (a) (1) In this section the following terms have the meanings indicated.

21 (2) “Value” means fair market value as of the date upon which the
22 execution or other judicial process becomes effective against the property of the debtor,
23 or the date of filing the petition under the federal Bankruptcy Code.

24 (b) The following items are exempt from execution on a judgment:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) Wearing apparel, books, tools, instruments, or appliances, in an
2 amount not to exceed \$5,000 in value necessary for the practice of any trade or
3 profession except those kept for sale, lease, or barter.

4 (2) Money payable in the event of sickness, accident, injury, or death
5 of any person, including compensation for loss of future earnings. This exemption
6 includes but is not limited to money payable on account of judgments, arbitrations,
7 compromises, insurance, benefits, compensation, and relief. Disability income benefits
8 are not exempt if the judgment is for necessities contracted for after the disability is
9 incurred.

10 (3) Professionally prescribed health aids for the debtor or any
11 dependent of the debtor.

12 (4) The debtor's interest, not to exceed \$1,000 in value, in household
13 furnishings, household goods, wearing apparel, appliances, books, animals kept as
14 pets, and other items that are held primarily for the personal, family, or household use
15 of the debtor or any dependent of the debtor.

16 (5) Cash or property of any kind equivalent in value to \$6,000 is
17 exempt, if within 30 days from the date of the attachment or the levy by the sheriff,
18 the debtor elects to exempt cash or selected items of property in an amount not to
19 exceed a cumulative value of \$6,000.

20 (6) Money payable or paid in accordance with an agreement or court
21 order for child support.

22 (7) Money payable or paid in accordance with an agreement or court
23 order for alimony to the same extent that wages are exempt from attachment under §
24 15-601.1(b)(1)(ii) or (2)(i) of the Commercial Law Article.

25 (8) The debtor's beneficial interest in any trust property that is
26 immune from the claims of the debtor's creditors under § 14-113 of the Estates and
27 Trusts Article.

28 (9) With respect to claims by a separate creditor of a husband or wife,
29 trust property that is immune from the claims of the separate creditors of the husband
30 or wife under § 14-113 of the Estates and Trusts Article.

31 (c) (1) In order to determine whether the property listed in subsection
32 (b)(4) and (5) of this section is subject to execution, the sheriff shall appraise the
33 property at the time of levy. The sheriff shall return the appraisal with the writ.

34 (2) An appraisal made by the sheriff under this subsection is subject to
35 review by the court on motion of the debtor.

1 (3) Procedures will be as prescribed by rules issued by the Court of
2 Appeals.

3 (d) The debtor may not waive, by cognovit note or otherwise, the provisions
4 of subsections (b) and (h) of this section.

5 (e) The exemptions in this section do not apply to wage attachments.

6 (f) (1) (I) In addition to the exemptions provided in subsection (b) of
7 this section, and in other statutes of this State, in any proceeding under Title 11 of the
8 United States Code, entitled "Bankruptcy", any individual debtor domiciled in this
9 State may exempt the debtor's aggregate interest in:

10 [(i)] 1. Personal property, up to \$5,000; and

11 [(ii)] 2. [Owner-occupied residential real property, up to]
12 **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH:**

13 **A. OWNER-OCCUPIED RESIDENTIAL REAL OR**
14 **PERSONAL PROPERTY;**

15 **B. AN OWNER-OCCUPIED CONDOMINIUM UNIT; OR**

16 **C. A COOPERATIVE THAT OWNS PROPERTY THAT**
17 **THE DEBTOR OCCUPIES AS A RESIDENCE.**

18 **(II) THE EXEMPTION ALLOWED UNDER SUBPARAGRAPH**
19 **(I)2 OF THIS PARAGRAPH MAY NOT EXCEED** the amount under 11 U.S.C. §
20 522(d)(1), adjusted in accordance with 11 U.S.C. § 104, subject to the provisions of
21 paragraphs (2) and (3) of this subsection.

22 (2) An individual may not claim the exemption under paragraph
23 [(1)(ii)] **(1)(I)2** of this subsection on a particular property if:

24 (i) The individual has claimed successfully the exemption on
25 the property within 8 years prior to the filing of the bankruptcy proceeding in which
26 the exemption under this subsection is claimed; or

27 (ii) The individual's spouse, child, child's spouse, parent, sibling,
28 grandparent, or grandchild has claimed successfully the exemption on the property
29 within 8 years prior to the filing of the bankruptcy proceeding in which the exemption
30 under this subsection is claimed.

31 (3) The exemption under paragraph [(1)(ii)] **(1)(I)2** of this subsection
32 may not be claimed by both a husband and wife in the same bankruptcy proceeding.

1 (g) In any bankruptcy proceeding, a debtor is not entitled to the federal
2 exemptions provided by § 522(d) of the federal Bankruptcy Code.

3 (h) (1) In addition to the exemptions provided in subsections (b) and (f) of
4 this section and any other provisions of law, any money or other assets payable to a
5 participant or beneficiary from, or any interest of any participant or beneficiary in, a
6 retirement plan qualified under § 401(a), § 403(a), § 403(b), § 408, § 408A, § 414(d), or
7 § 414(e) of the United States Internal Revenue Code of 1986, as amended, or § 409 (as
8 in effect prior to January 1984) of the United States Internal Revenue Code of 1954, as
9 amended, shall be exempt from any and all claims of the creditors of the beneficiary or
10 participant, other than claims by the Department of Health and Mental Hygiene.

11 (2) Paragraph (1) of this subsection does not apply to:

12 (i) An alternate payee under a qualified domestic relations
13 order, as defined in § 414(p) of the United States Internal Revenue Code of 1986, as
14 amended;

15 (ii) A retirement plan, qualified under § 401(a) of the United
16 States Internal Revenue Code of 1986, as amended, as a creditor of an individual
17 retirement account qualified under § 408 of the United States Internal Revenue Code
18 of 1986, as amended; or

19 (iii) The assets of a bankruptcy case filed before January 1, 1988.

20 (3) The interest of an alternate payee in a plan described in subsection
21 (h)(1) of this section shall be exempt from any and all claims of any creditor of the
22 alternate payee, except claims by the Department of Health and Mental Hygiene.

23 (4) If a contribution to a retirement plan described under paragraph
24 (1) of this subsection exceeds the amount deductible or, in the case of contribution
25 under § 408A of the Internal Revenue Code, the maximum contribution allowed under
26 the applicable provisions of the United States Internal Revenue Code of 1986, as
27 amended, the portion of that contribution that exceeds the amount deductible or, in
28 the case of contribution under § 408A of the Internal Revenue Code, the maximum
29 contribution allowed, and any accrued earnings on such a portion, are not exempt
30 under paragraph (1) of this subsection.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
32 construed to apply only prospectively and may not be applied or interpreted to have
33 any effect on or application to any case filed before the effective date of this Act.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2011.